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MAKI, STEVEN D

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENSAKU FUJII and TAKEHIKO MURATA

Appeal 2010-000357
Application 10/532,424
Technology Center 1700

Before CATHERINE Q. TIMM, JEFFREY T. SMITH, and
KAREN M. HASTINGS, Administrative Patent Judges.

HASTINGS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 12, 15-18, and 20.¹ We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

Claim 12 is illustrative of the subject matter on appeal:

¹ Claim 21 has been canceled (App. Br. 2).

12. A tire having a rotation timing indication hole comprising a multi-step hole defined in a tire tread, wherein

the multi-step hole includes a first step on a tread surface side and a second step located closer to a bottom side than the first step;

the first step has a contour including one of a polygon formed by straight lines and a loop-shape formed by curved lines;

the second step has a contour including the other of the polygon and the loop-shape, the contour of the second step being different from the contour of the first step and being inscribed on or included in the contour of the first step; and

the first step and the second step have depths separately representative of different degrees of wear of a tread surface until tire rotation timing.

The Examiner maintains, and Appellants appeal, the rejection under 35 U.S.C. § 103(a) of claims 12, 15-18, and 20 as unpatentable over the combined prior art of JP 684², and SU 833³, optionally with JP 608⁴ and Slingluff⁵.

Appellants' arguments focus only on independent claim 12, therefore we shall also focus on claim 12.

MAIN ISSUE ON APPEAL

Did the Examiner reversibly err in determining that the claimed tire rotation indicating hole would have been obvious over the applied combined prior art, because, as alleged by Appellants, there is no apparent reason to

²Yamashita, JP 59-025684 issued Jun. 19, 1981, as translated.

³ Revutskii, SU 408,833 issued Nov. 30, 1973, as translated.

⁴ Hideaki, JP 55-110608 issued Aug. 26, 1980, as translated.

⁵Slingluff, US 5,980,668 issued Nov. 9, 1999.

modify JP 684's stepped tire tread indicator recess with the stepped shape for a tire tread indicator projection as depicted in SU 833 (App. Br.; Reply Br. generally)?

We answer this question in the negative.

PRINCIPLES OF LAW

In assessing whether a claim to a combination of prior art elements would have been obvious, the question to be asked is whether the improvement of the claim is more than the predictable use of prior art elements according to their established functions. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). The analysis need not seek out precise teachings directed to the specific subject matter of the claim, for it is proper to take account of the inferences and creative steps that a person of ordinary skill in the art would employ. *Id.* at 418.

"For obviousness under § 103, all that is required is a reasonable expectation of success." *In re O'Farrell*, 853 F.2d 894, 903-04 (Fed. Cir. 1988).

ANALYSIS

with Factual Findings

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellants' repeated arguments that there is no reason to modify JP 684's hole shaped wear indicator based on the projection shaped wear indicator of SU 833 and that the Examiner is de facto using impermissible hindsight to combine the teachings of two different types of wear indicators (e.g., App. Br. 7-11) are unavailing for all of the reasons aptly pointed out by the Examiner (Ans. 10-15). Specifically, even assuming that Appellants are correct that SU 833 only depicts stepped projections for its tire wear indicators, we agree with the Examiner that it would have been obvious to provide different shapes as claimed for the stepped wear indicator hole of JP 684 in light of the overall teachings of JP 684 and SU 833 (Ans. generally).

Accordingly, it would have been prima facie obvious for one of ordinary skill in the art, using no more than ordinary creativity, to have modified the wear indicator hole of JP 684 to provide the claimed different shaped steps as the use of such different shaped steps for a wear indicator was known as exemplified in SU 833. This would appear to be no more than the predictable use of a known alternative prior art stepped shape for a wear indicator element.

On this record, Appellants have not shown any evidence of secondary considerations, such as unexpected results, from the claimed invention.

Under these circumstances, Appellants have not shown reversible error in the Examiner's determination that the subject matter of independent claim 12 would have been prima facie obvious over the combined teachings of the applied prior art references.

Appeal 2010-000357
Application 10/532,424

For the reasons stated above and in the Answer, we sustain the § 103 rejection of the appealed claims⁶.

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED

sld

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⁶ Only those arguments actually made by Appellants have been considered in this decision. Arguments which could have been made but that Appellants chose not to make have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii) (2008).